



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

**HB4077**

Introduced 05/12/05, by Rep. Dave Winters

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/5-1006.5

Amends the Counties Code. Amends the Special County Occupation Tax For Public Safety or Transportation Law in the Counties Code. Provides that, if a county imposes a tax under the Law, then it may, by ordinance, provide that the tax does not apply with respect to the sale or use of motor fuel or of specific types of motor fuel. Provides that, if the county board provides that the tax does not apply with respect to the sale or use of motor fuel or specific types of motor fuel, then a referendum is not required to reimpose the tax with respect to that motor fuel. Effective immediately.

LRB094 12347 BDD 46376 b

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section  
5 5-1006.5 as follows:

6 (55 ILCS 5/5-1006.5)

7 Sec. 5-1006.5. Special County Retailers' Occupation Tax  
8 For Public Safety or Transportation.

9 (a) The county board of any county may impose a tax upon  
10 all persons engaged in the business of selling tangible  
11 personal property, other than personal property titled or  
12 registered with an agency of this State's government, at retail  
13 in the county on the gross receipts from the sales made in the  
14 course of business to provide revenue to be used exclusively  
15 for public safety or transportation purposes in that county, if  
16 a proposition for the tax has been submitted to the electors of  
17 that county and approved by a majority of those voting on the  
18 question. If imposed, this tax shall be imposed only in  
19 one-quarter percent increments. By resolution, the county  
20 board may order the proposition to be submitted at any  
21 election. If the tax is imposed for transportation purposes for  
22 expenditures for public highways or as authorized under the  
23 Illinois Highway Code, the county board must publish notice of  
24 the existence of its long-range highway transportation plan as  
25 required or described in Section 5-301 of the Illinois Highway  
26 Code and must make the plan publicly available prior to  
27 approval of the ordinance or resolution imposing the tax. If  
28 the tax is imposed for transportation purposes for expenditures  
29 for passenger rail transportation, the county board must  
30 publish notice of the existence of its long-range passenger  
31 rail transportation plan and must make the plan publicly  
32 available prior to approval of the ordinance or resolution

1 imposing the tax. The county clerk shall certify the question  
2 to the proper election authority, who shall submit the  
3 proposition at an election in accordance with the general  
4 election law.

5 (1) The proposition for public safety purposes shall be  
6 in substantially the following form:

7 "Shall (name of county) be authorized to impose a  
8 public safety tax at the rate of .... upon all persons  
9 engaged in the business of selling tangible personal  
10 property at retail in the county on gross receipts from the  
11 sales made in the course of their business?"

12 For the purposes of the paragraph, "public safety  
13 purposes" means crime prevention, detention, fire  
14 fighting, police, medical, ambulance, or other emergency  
15 services.

16 Votes shall be recorded as "Yes" or "No".

17 (2) The proposition for transportation purposes shall  
18 be in substantially the following form:

19 "Shall (name of county) be authorized to impose a tax  
20 at the rate of (insert rate) upon all persons engaged in  
21 the business of selling tangible personal property at  
22 retail in the county on gross receipts from the sales made  
23 in the course of their business to be used for  
24 transportation purposes?

25 For the purposes of this paragraph, transportation  
26 purposes means construction, maintenance, operation, and  
27 improvement of public highways, any other purpose for which  
28 a county may expend funds under the Illinois Highway Code,  
29 and passenger rail transportation.

30 The votes shall be recorded as "Yes" or "No".

31 If a majority of the electors voting on the proposition  
32 vote in favor of it, the county may impose the tax. A county  
33 may not submit more than one proposition authorized by this  
34 Section to the electors at any one time.

35 This additional tax may not be imposed on the sales of food  
36 for human consumption that is to be consumed off the premises

1 where it is sold (other than alcoholic beverages, soft drinks,  
2 and food which has been prepared for immediate consumption) and  
3 prescription and non-prescription medicines, drugs, medical  
4 appliances and insulin, urine testing materials, syringes, and  
5 needles used by diabetics. The tax imposed by a county under  
6 this Section and all civil penalties that may be assessed as an  
7 incident of the tax shall be collected and enforced by the  
8 Illinois Department of Revenue and deposited into a special  
9 fund created for that purpose. The certificate of registration  
10 that is issued by the Department to a retailer under the  
11 Retailers' Occupation Tax Act shall permit the retailer to  
12 engage in a business that is taxable without registering  
13 separately with the Department under an ordinance or resolution  
14 under this Section. The Department has full power to administer  
15 and enforce this Section, to collect all taxes and penalties  
16 due under this Section, to dispose of taxes and penalties so  
17 collected in the manner provided in this Section, and to  
18 determine all rights to credit memoranda arising on account of  
19 the erroneous payment of a tax or penalty under this Section.  
20 In the administration of and compliance with this Section, the  
21 Department and persons who are subject to this Section shall  
22 (i) have the same rights, remedies, privileges, immunities,  
23 powers, and duties, (ii) be subject to the same conditions,  
24 restrictions, limitations, penalties, and definitions of  
25 terms, and (iii) employ the same modes of procedure as are  
26 prescribed in Sections 1, 1a, 1a-1, 1d, 1e, 1f, 1i, 1j, 1k, 1m,  
27 1n, 2, 2-5, 2-5.5, 2-10 (in respect to all provisions contained  
28 in those Sections other than the State rate of tax), 2-15  
29 through 2-70, 2a, 2b, 2c, 3 (except provisions relating to  
30 transaction returns and quarter monthly payments), 4, 5, 5a,  
31 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 6, 6a, 6b, 6c, 7, 8,  
32 9, 10, 11, 11a, 12, and 13 of the Retailers' Occupation Tax Act  
33 and Section 3-7 of the Uniform Penalty and Interest Act as if  
34 those provisions were set forth in this Section.

35 Persons subject to any tax imposed under the authority  
36 granted in this Section may reimburse themselves for their

1 sellers' tax liability by separately stating the tax as an  
2 additional charge, which charge may be stated in combination,  
3 in a single amount, with State tax which sellers are required  
4 to collect under the Use Tax Act, pursuant to such bracketed  
5 schedules as the Department may prescribe.

6 Whenever the Department determines that a refund should be  
7 made under this Section to a claimant instead of issuing a  
8 credit memorandum, the Department shall notify the State  
9 Comptroller, who shall cause the order to be drawn for the  
10 amount specified and to the person named in the notification  
11 from the Department. The refund shall be paid by the State  
12 Treasurer out of the County Public Safety or Transportation  
13 Retailers' Occupation Tax Fund.

14 (b) If a tax has been imposed under subsection (a), a  
15 service occupation tax shall also be imposed at the same rate  
16 upon all persons engaged, in the county, in the business of  
17 making sales of service, who, as an incident to making those  
18 sales of service, transfer tangible personal property within  
19 the county as an incident to a sale of service. This tax may  
20 not be imposed on sales of food for human consumption that is  
21 to be consumed off the premises where it is sold (other than  
22 alcoholic beverages, soft drinks, and food prepared for  
23 immediate consumption) and prescription and non-prescription  
24 medicines, drugs, medical appliances and insulin, urine  
25 testing materials, syringes, and needles used by diabetics. The  
26 tax imposed under this subsection and all civil penalties that  
27 may be assessed as an incident thereof shall be collected and  
28 enforced by the Department of Revenue. The Department has full  
29 power to administer and enforce this subsection; to collect all  
30 taxes and penalties due hereunder; to dispose of taxes and  
31 penalties so collected in the manner hereinafter provided; and  
32 to determine all rights to credit memoranda arising on account  
33 of the erroneous payment of tax or penalty hereunder. In the  
34 administration of, and compliance with this subsection, the  
35 Department and persons who are subject to this paragraph shall  
36 (i) have the same rights, remedies, privileges, immunities,

1 powers, and duties, (ii) be subject to the same conditions,  
2 restrictions, limitations, penalties, exclusions, exemptions,  
3 and definitions of terms, and (iii) employ the same modes of  
4 procedure as are prescribed in Sections 2 (except that the  
5 reference to State in the definition of supplier maintaining a  
6 place of business in this State shall mean the county), 2a, 2b,  
7 2c, 3 through 3-50 (in respect to all provisions therein other  
8 than the State rate of tax), 4 (except that the reference to  
9 the State shall be to the county), 5, 7, 8 (except that the  
10 jurisdiction to which the tax shall be a debt to the extent  
11 indicated in that Section 8 shall be the county), 9 (except as  
12 to the disposition of taxes and penalties collected), 10, 11,  
13 12 (except the reference therein to Section 2b of the  
14 Retailers' Occupation Tax Act), 13 (except that any reference  
15 to the State shall mean the county), Section 15, 16, 17, 18, 19  
16 and 20 of the Service Occupation Tax Act and Section 3-7 of the  
17 Uniform Penalty and Interest Act, as fully as if those  
18 provisions were set forth herein.

19 Persons subject to any tax imposed under the authority  
20 granted in this subsection may reimburse themselves for their  
21 serviceman's tax liability by separately stating the tax as an  
22 additional charge, which charge may be stated in combination,  
23 in a single amount, with State tax that servicemen are  
24 authorized to collect under the Service Use Tax Act, in  
25 accordance with such bracket schedules as the Department may  
26 prescribe.

27 Whenever the Department determines that a refund should be  
28 made under this subsection to a claimant instead of issuing a  
29 credit memorandum, the Department shall notify the State  
30 Comptroller, who shall cause the warrant to be drawn for the  
31 amount specified, and to the person named, in the notification  
32 from the Department. The refund shall be paid by the State  
33 Treasurer out of the County Public Safety or Transportation  
34 Retailers' Occupation Fund.

35 Nothing in this subsection shall be construed to authorize  
36 the county to impose a tax upon the privilege of engaging in

1 any business which under the Constitution of the United States  
2 may not be made the subject of taxation by the State.

3 (c) The Department shall immediately pay over to the State  
4 Treasurer, ex officio, as trustee, all taxes and penalties  
5 collected under this Section to be deposited into the County  
6 Public Safety or Transportation Retailers' Occupation Tax  
7 Fund, which shall be an unappropriated trust fund held outside  
8 of the State treasury. On or before the 25th day of each  
9 calendar month, the Department shall prepare and certify to the  
10 Comptroller the disbursement of stated sums of money to the  
11 counties from which retailers have paid taxes or penalties to  
12 the Department during the second preceding calendar month. The  
13 amount to be paid to each county, and deposited by the county  
14 into its special fund created for the purposes of this Section,  
15 shall be the amount (not including credit memoranda) collected  
16 under this Section during the second preceding calendar month  
17 by the Department plus an amount the Department determines is  
18 necessary to offset any amounts that were erroneously paid to a  
19 different taxing body, and not including (i) an amount equal to  
20 the amount of refunds made during the second preceding calendar  
21 month by the Department on behalf of the county and (ii) any  
22 amount that the Department determines is necessary to offset  
23 any amounts that were payable to a different taxing body but  
24 were erroneously paid to the county. Within 10 days after  
25 receipt by the Comptroller of the disbursement certification to  
26 the counties provided for in this Section to be given to the  
27 Comptroller by the Department, the Comptroller shall cause the  
28 orders to be drawn for the respective amounts in accordance  
29 with directions contained in the certification.

30 In addition to the disbursement required by the preceding  
31 paragraph, an allocation shall be made in March of each year to  
32 each county that received more than \$500,000 in disbursements  
33 under the preceding paragraph in the preceding calendar year.  
34 The allocation shall be in an amount equal to the average  
35 monthly distribution made to each such county under the  
36 preceding paragraph during the preceding calendar year

1 (excluding the 2 months of highest receipts). The distribution  
2 made in March of each year subsequent to the year in which an  
3 allocation was made pursuant to this paragraph and the  
4 preceding paragraph shall be reduced by the amount allocated  
5 and disbursed under this paragraph in the preceding calendar  
6 year. The Department shall prepare and certify to the  
7 Comptroller for disbursement the allocations made in  
8 accordance with this paragraph.

9 (d) For the purpose of determining the local governmental  
10 unit whose tax is applicable, a retail sale by a producer of  
11 coal or another mineral mined in Illinois is a sale at retail  
12 at the place where the coal or other mineral mined in Illinois  
13 is extracted from the earth. This paragraph does not apply to  
14 coal or another mineral when it is delivered or shipped by the  
15 seller to the purchaser at a point outside Illinois so that the  
16 sale is exempt under the United States Constitution as a sale  
17 in interstate or foreign commerce.

18 (e) Nothing in this Section shall be construed to authorize  
19 a county to impose a tax upon the privilege of engaging in any  
20 business that under the Constitution of the United States may  
21 not be made the subject of taxation by this State.

22 (e-5) If a county imposes a tax under this Section, the  
23 county board may, by ordinance, discontinue or lower the rate  
24 of the tax or, in addition or alternatively, provide, with  
25 respect to the sale or use of motor fuel or specific types of  
26 motor fuel, that the tax does not apply. If the county board  
27 lowers the tax rate or discontinues the tax, a referendum must  
28 be held in accordance with subsection (a) of this Section in  
29 order to increase the rate of the tax or to reimpose the  
30 discontinued tax. If the county board provides that the tax  
31 does not apply with respect to the sale or use of motor fuel or  
32 specific types of motor fuel, then a referendum is not required  
33 to reimpose the tax with respect to that motor fuel.

34 (f) Beginning April 1, 1998, the results of any election  
35 authorizing a proposition to impose a tax under this Section or  
36 effecting a change in the rate of tax, or any ordinance

1 lowering the rate or discontinuing the tax, shall be certified  
2 by the county clerk and filed with the Illinois Department of  
3 Revenue either (i) on or before the first day of April,  
4 whereupon the Department shall proceed to administer and  
5 enforce the tax as of the first day of July next following the  
6 filing; or (ii) on or before the first day of October,  
7 whereupon the Department shall proceed to administer and  
8 enforce the tax as of the first day of January next following  
9 the filing.

10 (g) When certifying the amount of a monthly disbursement to  
11 a county under this Section, the Department shall increase or  
12 decrease the amounts by an amount necessary to offset any  
13 miscalculation of previous disbursements. The offset amount  
14 shall be the amount erroneously disbursed within the previous 6  
15 months from the time a miscalculation is discovered.

16 (h) This Section may be cited as the "Special County  
17 Occupation Tax For Public Safety or Transportation Law".

18 (i) For purposes of this Section, "public safety" includes,  
19 but is not limited to, crime prevention, detention, fire  
20 fighting, police, medical, ambulance, or other emergency  
21 services. For the purposes of this Section, "transportation"  
22 includes, but is not limited to, the construction, maintenance,  
23 operation, and improvement of public highways, any other  
24 purpose for which a county may expend funds under the Illinois  
25 Highway Code, and passenger rail transportation.

26 (Source: P.A. 93-556, eff. 8-20-03.)

27 Section 99. Effective date. This Act takes effect upon  
28 becoming law.